IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 30-06-2006

CORAM :

THE HONOURABLE MR.JUSTICE A. KULASEKARAN

W.P. No. 22606 of 2006
-o-

The Lakshmi Mills Company Ltd
Palladam Branch
Kuppusamy Naidu Puram
Palladam - 641 662
Coimbatore .. Petitioner

Versus

1. The Dy. Chief Inspector of
Factories
Perumanallur Road
Tiruppur 641 602

2. The President
Kovai Periyar Mavatta Dravida
Panchalai Thozhilalar Munnetra Sangam
NO.48, Tatabad 3rd Street
Coimbatore - 641 012 .. Respondents

Petition filed under Article 226 of The Constitution of India praying for a Writ of Certiorari as stated therein.

For Petitioner : Mr. V. Karthic

For Respondents : Mr. C.K. Chandrasekar
for M/s. Row & Reddy for R2

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ORDER

The Management has filed this writ petition praying for a Writ of Certiorari to call for the records of the first respondent in proceedings Na.Ka.No.A/6513/2002 and quash its order dated 23.06.2003 granting permanancy to 49 workers belonging to the second respondent/Union.

2. The workers belonging to the second respondent Union have joined the petitioner mill in the year 1994, 1995 and 1996, which details are mentioned in Page No.25 and 26 of the typed set of papers and there is no dispute about the said period is concerned. It is stated by the workmen that they continuously worked in the petitioner mill. In other words, they are in

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continuous service for a period of 480 days in a period of twenty four calendar months, hence, they approached the first respondent herein and filed necessary application praying to pass orders as per the provisions of Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Act, 1981, hereinafter referred to as Act. On receipt of the same, the first respondent issued notice to the petitioner herein and conducted enquiry on 30.12.2002, 27.01.2003, 06.02.2003, 07.04.2003, 30.04.2003 and 19.05.2003. Before the first respondent, on behalf of the petitioner, one Ravichandran, Labour Welfare Officer appeared and filed a reply on 18.04.2003. The second respondent Union have filed Ex.P1, Petition dated 10.10.2002 filed by the President of the Union; Ex.P2, Independent petitions dated 16.10.2002 filed by the 49 employees belonging to the second respondent Union; Ex.P3, reply dated 18.04.2003 filed by the petitioner and Ex.P4, Petition dated 19.05.2003 filed by the President of the Union. The first respondent, on consideration of the above documentary evidence found that the workmen are in continuous service for a period of 480 days in 24 calendar months and directed the petitioner to grant permanency to them from the date on which they completed 480 days. Aggrieved by the said order of the first respondent, the present writ petition has been filed.

3. Mr. Karthic, learned counsel for the petitioner submitted that the first respondent, without following Rule 3 and 4 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Rules, 1981, hereinafter referred to as Rules, has passed the impugned order without inspection of records and prayed for setting aside the impugned order passed by the first respondent.

4. Mr. Chandrasekar, learned counsel appearing for the second respondent submitted that the proceedings under the Act is summary proceedings and the petitioner herein has not disputed the fact that the workmen of the second respondent were continuously employed for 480 days in 24 calendar months, which is evident that the list of employees and their service period placed by the workmen before the first respondent was not disputed by the petitioner. When the facts are not disputed by the petitioner, it is unwarranted for the first respondent to inspect the factory or to peruse the records. In support of this contention, the learned counsel for the second respondent also brought to the notice of this Court the reply dated 18.04.2003 filed by the petitioner before the first respondent to show that the above said facts are not disputed by the petitioner and prayed for dismissal of the writ petition.

5. I have carefully considered the submission of counsel on either side and perused the records. Admittedly, the first respondent is conferred with the power to deal with the matter by way of summary proceedings. Section 3 of the Act runs as follows:-

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"3. *Conferment of permanent status to workmen.*- (1) Notwithstanding anything contained

in any law for the time being in force every workman, who is in continuous service for a period of four hundred and eighty days in a period of twenty-four calendar months in an industrial establishment shall be made permanent.

(2) A workman shall be said to be in continuous service for a period if he is, for5 that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike, which is not illegal, or a lock-out or on account of non-employment or discharge of such workman for a period which does not exceed three months and during which period a substitute has been employed in his place by the employer, or a cessation of work which is not due to any fault on the part of the workman.

6. The corresponding Rule to the above said Section namely Rule 3 and 4 of the Tamil Nadu Industrial Establishment (Conferment of Permanent Status to Workmen) Rules, 1981 runs as follows:-

"3. *Powers of Inspectors.*- In addition to the powers conferred by Section 5 of the Act, an Inspector shall, for the purpose of giving effect to the provisions of the Act, have power to do all or any of the following things, that is to say-

(i) to satisfy himself at each inspection that the prescribed registers and forms are properly maintained;

(ii) to point out all such defects or irregularities as he may have observed and to give orders for their rectification and to record and furnish to the employer a summary of the defects or irregularities and of his orders;

(iii) to note how far the defects pointed out at previous inspections have been removed and how far orders previously issued have been complied with:

(iv) to require any employer to supply or send any return or true copy of any document or information relating to the provisions of the Act:

(v) to prosecute, conduct or defend before a Court any complaint or other proceedings arising under the Act.

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> 4. *Information required by the Inspector.*- The employer of an industrial establishment shall furnish any information that an Inspector may require for the purpose of satisfying himself whether any provision of the Act or the rules made thereunder has been complied with or whether any order of an Inspector has been duly carried out. Any demand by an Inspector of any such information if made during the course of an inspection shall be complied with forthwith if the information is available in the industrial premises or if made in writing shall be complied with, within seven days on receipt thereof."

7. It is evident from the provisions of Section 3 of the Act that when a workmen is in continuous service for a period of 480 days in a period of twenty four calendar months in an industrial establishment, he shall be made permanent. As rightly pointed out by the counsel for the second respondent, the list containing the date of entry of the workers into service was filed claiming that ever since the said date they are in continuous service in the petitioner/management, which was not disputed by the petitioner before the first respondent. The petitioner/ Management has admitted the fact that all the benefits were extended to the employees of the second respondent on par with the permanent workers, but very strangely stated in their correspondence with the second respondent that if permanency sought for is granted to their members, the same has to be extended to the employees of other unions, hence, the permanency was not granted. When the petitioner has not disputed the fact that the employees of the second respondent Union have completed 480 days of service continuously, it is unnecessary for the first respondent to go for inspection of the factory or records. The first respondent, considering the valid documentary evidence produced by the second respondent Union has rightly passed an order directing the petitioner to grant permanent status to the employees of the second respondent Union and this Court finds no reason to interfere with the same.

8. In the result, the writ petition is dismissed. No costs.

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Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

The Dy. Chief Inspector of
  Factories
Perumanallur Road
Tiruppur 641 602

1 cc to Govt. Pleader, SR.No.27992
1 cc to Mr.T.S.Gopalan, Advocate, SR.27847
1 cc to M/s. Row & Reddy, Advocate, SR.28009

pli (co)

dv/19.7.06

W.P. No. 22606 of 2003

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